UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRIPLE A FIRE PROTECTION, INC,

and

Case 15-CA-11498

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, ROAD SPRINKLER FITTERS LOCAL UNION NO. 669, AFL-CIO

ORDER DENYING MOTION FOR RECONSIDERATION

On August 26, 2011, the National Labor Relations Board issued a Second Supplemental Decision and Order in this compliance proceeding. The decision determined the amounts owed by the Respondent to make employees whole for a unilateral reduction in wage rates and to make three benefit funds whole for the failure to make required contributions. On October 7, 2011, the Respondent filed a Motion for Reconsideration. On October 17, 2011, the Acting General Counsel filed an opposition.

¹ 357 NLRB No. 68. Member Hayes did not participate in that decision, but he agrees that the Respondent has failed to show extraordinary circumstances warranting reconsideration.

Under Section 102.48(d)(1) of the Board's Rules and Regulations, a motion for reconsideration must be justified by "extraordinary circumstances." The Respondent has failed to make this showing.

First, the Respondent contests the formulas used to calculate backpay and pension fund contributions. Specifically, the Respondent argues that the Board's calculation of backpay owed to the individual discriminatees failed to account for the contractual wage differential between apprentice and journeymen rates of pay. The Respondent also argues that the Board's calculation of amounts owed to the pension funds failed to account for the contractual provision that fund contributions are not required on behalf of Grade 1 apprentices. In an earlier stage of the compliance proceeding, however, the Board found that the Respondent had failed to contest the General Counsel's calculation formulas with sufficient specificity. The Board granted summary judgment for the Charging Party Union on the appropriateness of the formulas, thereby precluding the Respondent from contesting them at subsequent stages of the proceeding. See 357 NLRB No. 68, slip op. at 1, incorporating by reference 353 NLRB 838 (2009). The Respondent has not presented any newly discovered or

previously unavailable evidence to justify reconsideration of the formulas.

Second, the Respondent reiterates arguments that, because they were previously considered and rejected by the Board, fail to establish adequate grounds for reconsideration. Specifically, the Respondent asserts that the Board erred in failing to find that Arandess Management Co.2 is applicable to determining make-whole relief due the pension funds, and further that any make-whole liability ceased on or before April 16, 1999, by which date the Respondent asserts the parties had reached an impasse in bargaining or the Union had failed to bargain in good faith. The Board specifically considered and rejected the former argument in its compliance decision. See 357 NLRB No. 68, slip op. at 1. The Board rejected the latter argument in the underlying unfair labor practice proceeding. See 315 NLRB 409, 417-418 (1994), enfd. 136 F.3d 727 (11th Cir. 1998), cert. denied 525 U.S. 1067 (1999).3 The Respondent fails to advance any cogent reason why those determinations should be reconsidered.

² 337 NLRB 245 (2001).

³ The Respondent additionally asserts that the Board's third amended compliance specification contains "technical flaws." The Respondent argues that backpay and fringe benefit contributions for employees are based on the parties' contractual union-security provision, which either

In short, the Respondent has made no showing, pursuant to Rule 102.48(d)(1), that its motion for reconsideration is justified by extraordinary circumstances. We therefore deny the motion.

Accordingly, having duly considered the matter,

IT IS ORDERED that the Motion for Reconsideration is denied.

Dated, Washington, D.C., December 7, 2011.

Mark Gaston Pearce,	Chairman
Brian E. Hayes,	Member

(SEAL)

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⁽a) did not survive the expiration of the parties' collective-bargaining agreement, or (b) contained certain preconditions, which the compliance specification failed to allege were met, for payment of wages and benefit contributions. The former contention has been previously considered and rejected and, therefore, does not warrant reconsideration. See 353 NLRB at 841, incorporated by reference in 357 NLRB No. 68. Furthermore, both contentions lack merit because the backpay and pension fund contributions owed are based on the wage and fund contribution provisions of the collective-bargaining agreement, not the union-security provision.